

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAPHAEL GEORGE RAYFORD,

Plaintiff,

v.

W. BLAIR, et al.,

Defendants.

Case No. [14-cv-03660-VC](#) (PR)

**ORDER SERVING TWO COGNIZABLE
CLAIMS**

Raphael George Rayford, an inmate at Salinas Valley State Prison proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against officers of the prison. On January 2, 2015, the Court issued an order recognizing as cognizable an Eighth Amendment excessive force claim and a First Amendment retaliation claim against Correctional Officers W. Blair, M. Espinosa and E. Munoz. The Court granted Rayford twenty-eight days in which to file an amended complaint to cure deficiencies in two claims that were not cognizable. The Court stated that if Rayford did not file an amended complaint within the designated time, the non-cognizable claims would be dismissed with prejudice and the two cognizable claims would be served on the defendants. More than twenty-eight days have passed and Rayford has not filed an amended complaint.

Based on the foregoing, the Court orders as follows:

1. The claims the Court found to be non-cognizable are dismissed with prejudice.

2. The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint (docket no. 1) and all attachments thereto and a copy of this Order to Blair, Espinosa and Munoz at Salinas Valley. The Clerk shall also mail a courtesy copy of the complaint with all attachments and a

1 copy of this Order to the State Attorney General's Office in San Francisco, and a copy of this
2 Order to Rayford.

3 3. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires
4 them to cooperate in saving unnecessary costs of service of the summons and the complaint.
5 Pursuant to Rule 4, if Defendants, after being notified of this action and asked by the Court, on
6 behalf of Rayford, to waive service of the summons, fail to do so, they will be required to bear the
7 cost of such service unless good cause be shown for their failure to sign and return the waiver
8 forms. If service is waived, this action will proceed as if Defendants had been served on the date
9 that the waiver is filed, except that pursuant to Rule 12(a)(1)(A)(ii), Defendants will not be
10 required to serve and file an answer or other responsive pleading before sixty days from the date
11 on which the request for waiver was sent. (This allows a longer time to respond than would be
12 required if formal service of summons is necessary.)

13 Defendants are advised to read the statement set forth at the foot of the waiver form that
14 more completely describes the duties of the parties with regard to waiver of service of the
15 summons. If service is waived after the date provided in the Notice but before Defendants have
16 been personally served, the answer shall be due sixty days from the date on which the request for
17 waiver was sent or twenty days from the date the waiver form is filed, whichever is later.

18 4. The following briefing schedule shall govern dispositive motions in this action:

19 a. No later than thirty days from the date the answer is due, Defendants shall file a
20 motion for summary judgment or other dispositive motion. If Defendants file a motion for
21 summary judgment, it shall be supported by adequate factual documentation and shall conform in
22 all respects to Federal Rule of Civil Procedure 56. If Defendants are of the opinion that this case
23 cannot be resolved by summary judgment, they shall so inform the Court prior to the date the
24 summary judgment motion is due. All papers filed with the Court shall be promptly served on
25 Rayford.

26 At the time of filing the motion for summary judgment or other dispositive motion,
27 Defendants shall comply with the Ninth Circuit's decision in *Woods v. Carey*, 684 F.3d 934 (9th
28 Cir. 2012), and provide Rayford with notice of what is required of him to oppose a summary

1 judgment motion.

2 b. Rayford's opposition to the motion for summary judgment or other dispositive
3 motion shall be filed with the Court and served on Defendants no later than twenty-eight days
4 after the date on which Defendants' motion is filed.

5 Before filing his opposition, Rayford is advised to read the notice that will be provided to
6 him by Defendants when the motion is filed, and Rule 56 of the Federal Rules of Civil Procedure
7 and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (party opposing summary judgment must come
8 forward with evidence showing triable issues of material fact on every essential element of his
9 claim). Rayford is cautioned that because he bears the burden of proving his allegations in this
10 case, he must be prepared to produce evidence in support of those allegations when he files his
11 opposition to Defendants' summary judgment motion. Such evidence may include sworn
12 declarations from himself and other witnesses, and copies of documents authenticated by sworn
13 declaration. Rayford will not be able to avoid summary judgment simply by repeating the
14 allegations of his complaint.

15 c. Defendants shall file a reply brief no later than fourteen days after the date
16 Rayford's opposition is filed.

17 d. The motion shall be deemed submitted as of the date the reply brief is due. No
18 hearing will be held on the motion unless the Court so orders at a later date.

19 5. Discovery may be taken in this action in accordance with the Federal Rules of Civil
20 Procedure. No further court order pursuant to Rule 30(a)(2) is required before the parties may
21 conduct discovery.

22 6. All communications by Rayford with the Court must be served on Defendants, or
23 Defendants' counsel once counsel has been designated, by mailing a true copy of the document to
24 Defendants or counsel.

25 7. It is Rayford's responsibility to prosecute this case. Rayford must keep the Court
26 informed of any change of address by filing a separate paper with the clerk headed "Notice of
27 Change of Address," and must comply with the Court's orders in a timely fashion. Failure to do so
28 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil

1 Procedure 41(b).

2 8. Extensions of time are not favored, though reasonable extensions will be granted. Any
3 motion for an extension of time must be filed no later than fourteen days prior to the deadline
4 sought to be extended.

5 **IT IS SO ORDERED.**

6 Dated: March 26, 2015

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8 VINCE CHHABRIA
9 United States District Judge
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United States District Court
Northern District of California